

REMARKS

May 3, 2005 Telephonic Interview

The Examiner is thanked for the opportunity to discuss the outstanding issues in the pending application.

During the interview the following issues were discussed.

1. Drawings Objection. The Examiner had originally taken the position that drawings must be included to reference “floodlights” and “180 degree” arc displacement of the conveyors. Applicant advised that MPEP §601.01(f) does not require amendment to the drawings since claims 1 and 2 are pending method claims. The Examiner, after consulting with a Senior Examiner, agreed that the arc displacement mechanism need not be shown in greater detail. Applicant agreed to incorporate reference number “14” in a replacement drawing sheet specifically for Fig. 19. However, the Examiner did not expressly agree to withdraw his objection with regard to the floodlights.

2. Claims 1 & 2 grammatical informalities. Applicant agreed to amend claims 1 and 2 to insert “pair of” in front of “conveyors” to distinguish from the earlier described “pallet conveyor”.

3. Houston reference. The Examiner advised Applicant that the Houston reference cited in the 04-13-2005 Office Action, US Pat. No. 2,699,877 was incorrect. The correct reference has now been communicated to Applicant to be US Pat. No. 2,590,965.

4. Scope of rejected claims. The Examiner advised that the claims rejected under 35 USC 102 in the 04-13-2005 Office Action (i.e. claims 2-12), was a typographical error and that the claims which actually stand rejected are claims 3-12.

The following is Applicant’s formal response to the Office Action dated 04-13-2005.

1. Drawings Objection

A replacement drawing sheet is submitted as part of this Response in accordance with the agreement reached with the Examiner during the 05-03-2005 telephonic interview.

The other issue was whether floodlights were required to be incorporated into the drawings. At this time, Applicant has elected to cancel claims 5, 6, 8, 11 & 12. These are dependent claims pertaining to the use of floodlights. Applicant reserves the right to present claims pertaining to the use of floodlights in any subsequent continuation or continuation-in-part application.

2. Claim Objections

Claims 1 and 2 have been amended in accordance with the agreement reached with the Examiner during the 05-03-2005 telephonic interview.

3. Claim Rejections

As a result of the 05-03-2005 telephonic interview, the Examiner cites US Pat. No. 2,590,965 issued to Huston as the ground for rejecting claims 3-12 on the ground of anticipation.

During the 05-03-2005 telephonic interview, Applicant pointed out how the drawings and specification address the 180 degree arc displacement for the pair of conveyors over the vehicle.

A. Independent Claim 3

Rejected claim 3 includes the limitation: "each of said displaceable arms capable of displacing a respective conveyor in a substantially 180 degree arc over said vehicle." The Huston reference does not teach nor suggest this limitation.

The passage the Examiner cited for his phrase "arms capable of displacing conveyor over the vehicle" actually reads:

"Figure 2 shows the wings folded upwardly in a position above the body of the truck in a manner permitting the apparatus to be moved along a road or highway." (Col.3, lines 68-71). Emphasis added.

Therefore, the wings in the Huston reference are folded upward from a horizontal position into a vertical position for transport purposes. First, this folding procedure is approximately 90 degrees; not the 180 degrees described in pending claim 3. Second, the folding procedure positions the wings of Huston above the vehicle; however, it does not displace the wings over the vehicle as does the arc displacement function of pending claim 3.

According to MPEP §2131: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631; 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Pending claim 3 includes the aforementioned limitation not taught nor suggested by the Huston reference cited by the Examiner. Based upon this and the explanation provided above, the Examiner is asked to withdraw his rejection based upon 35 USC §102 as to independent claim 3 and also to dependent claims 4-8.

B. Independent Claim 9

The Examiner rejected claim 9 using the Huston reference to show prior art for a pallet conveyor 51 and a set of tires.

From the Huston reference:

“The height of the conveyor 51 above the catwalk 32 is made such that a man standing upon the catwalk can readily reach the empty crates and lift them down to position them upon the crate rests at the several loading stations.” (Col. 5., lines 28-33).

By contrast, Applicant’s specification reads:

“The pallet conveyor is used to move pallets having filled flats of strawberries into position for removal from the vehicle.” (Paragraph [0015]).

It is readily apparent that the pallet conveyors serve different functions. In Huston, it is for empty crates while Applicant’s is for loaded pallets.

In addition, claim 9 includes a limitation not found nor suggested by the Huston reference:

“a pair of work platform sections, each work platform section located on an opposite side of said pallet conveyor section”. Emphasis added.

Applicant’s harvesting vehicle is designed to permit the loading of fruit from either one side of the vehicle or from the side opposite, depending upon the position of the conveyor belt system. This is the purpose of having a work platform section on either side of the pallet conveyor section. In other words, a work platform is always between the conveyor belt system and the pallet conveyor no matter what side of the vehicle the conveyor belt system is positioned.

By contrast, the Huston reference describes a vehicle that uses a packing apparatus that is mounted to its rear side. Fruit or vegetables are incapable of being picked from the front side of the vehicle (i.e. the side opposite of the rear side). Consequently, there is no need for work platform stations on both sides of pallet conveyor 51.

According to MPEP §2131: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631; 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Pending claim 9 includes the aforementioned limitation not taught nor suggested by the Huston reference cited by the Examiner. Based upon this and the explanation provided above, the Examiner is asked to withdraw his rejection based upon 35 USC §102 as to independent claim 9 and also to dependent claims 10-12.

CONCLUSION

All outstanding issues have been addressed. Applicant respectfully requests a timely Notice of Allowance be issued in this case for all pending claims.

Respectfully submitted,

Dated: May 12, 2005

A handwritten signature in black ink, appearing to read "Ralph D. Chabot", with a long horizontal flourish extending to the right.

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